

STATEMENT OF REASONS
Title 2, Chapter 1, California Code of Regulations
Adopt Sections 25 and 26

The State Personnel Board (Board) proposes to adopt section 25 of Title 2, Chapter 1, of the Code of Regulations (CCR), which clarifies that the merit principle applies to all appointments and promotions regardless of position budget allotments. The Board also proposes to adopt section 26 of Title 2, Chapter 1 of the CCR, concerning recordkeeping requirements for personnel-related documents.

SPECIFIC PURPOSE OF EACH SECTION

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is as follows:

The proposed adoption of section 25 of Title 2, Chapter 1, of the CCR clarifies that Article VII of the California Constitution, state civil service laws and regulations, and the merit principle apply to all appointments and promotions in state civil service regardless of the budget allotment from which the salary or wage is payable, including blanket position allotments.

1. Positions in State Civil Service

The State Civil Service Act (the Act) (Gov. Code, §§ 18500 et seq.) defines "position" to mean "any office or employment in the 'state civil service' as the phrase is defined in Section 1 of Article VII of the Constitution." (Gov. Code, § 18522, italics added.) Section 1 of the California Constitution provides in pertinent part: "(a) The civil service includes every officer and employee of the state except as otherwise provided in this Constitution." (Cal. Const., art. VII, § 1.) The definition of position is thus broad, without regard to the funding source of the position. In addition, the purpose of the Act, in pertinent part, is to "provide a comprehensive personnel system for the state civil service, in which...[a]ppointments are based upon merit and fitness ascertained through practical and competitive examination." (Gov. Code, § 18500, subd. (c)(2).)

2. Blanket Positions

The State Administrative Manual (SAM) refers to "blanket positions" and the role of the State Controller's office: "The State Controller's office will prepare a separate listing of actual expenditures from blanket positions (temporary, seasonal, and overtime) for the past year." (SAM, section 6439, rev. 09/10.)

The Department of Finance also addressed blanket positions in its Budget Letter (BL) 13-24. The BL explains, in relevant part, "If no vacant positions exist, departments may need to hire permanent employees into the Blanket. Once an authorized position becomes vacant, that employee should be moved from the Blanket into that permanent position. This may require a department to reclassify the authorized vacant position to accommodate moving the employee out of the Blanket and into their appropriate position." (BL 13-24, p. 2.) The focus of the BL is on budgetary considerations related to personnel matters and not the application of merit principles to hiring and promoting employees.

The Board's regulations do not currently address the application of the merit principle to filling, as opposed to establishing, positions in state civil service.

3. Purpose of the Proposed Regulation

As discussed above, there are two key policy areas hiring managers must follow when considering the staffing needs of their departments and divisions: one relates to the governor's budget and the other to the merit principles of the California Constitution. These policies do not conflict, since one relates to establishing positions in state civil service and the other to filling positions in state civil service. Nonetheless, since the principles of merit hiring and promoting are not customarily included in budgetary policy, the application of the merit principle to established positions should be clear.

Thus, the purpose of adopting section 25 to the Board's regulatory scheme is to safeguard the merit principle in state civil service and clarify that the merit principle applies to appointments and promotions in state civil service, regardless of the budget allotment from which the salary or wage is payable, including blanket position allotments.

The proposed adoption of section 26 of Title 2, Chapter 1, of the CCR requires appointing authorities to retain specified documents related to the selection process for a period of five years.

1. The Board's Compliance Review Authority

The Board may conduct a compliance review of the personnel practices of any state appointing authority to ensure compliance with civil service laws and regulations. (Gov. Code, § 18661.) When conducting a compliance review, the Board may inspect personnel related documents, policies, practices, and procedures. (Gov. Code, § 18661, sub. (d).) The Board may also interview appointing authority staff and witnesses regarding the subject of the compliance review. (*Ibid.*) Corrective action may result if the appointing authority fails to cooperate with the Board or if the Board finds an appointing authority deficient in personnel practices, policies, or procedures. (Gov. Code, § 18661, subds. (c) & (d).)

2. Record Retention Requirements

In relevant part, civil service laws require the employment procedures of each state agency to conform to the federal and state laws governing employment practices. (Gov. Code, § 18720.) Under the Fair Employment and Housing Act (FEHA), state agencies are required to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received. (Gov. Code, § 12946.) State agencies are also required to retain personnel files of applicants or terminated employees for a minimum period of two years after the date the employment action is taken. (*Ibid.*)

The Board's regulations do not include a record retention requirement for merit and personnel-related documents.¹ Therefore, in conducting its compliance reviews, the Board has relied upon Government Code section 12946 as authority requiring appointing authorities to maintain and preserve specified personnel records. Section 12946, however, does not cover with sufficient specificity all the merit-related documents that are essential for the Board to conduct a thorough and detailed compliance review of an appointing authority's hiring and selection practices to ensure compliance with merit principles and civil service laws and rules. For instance, section 12946 does not expressly require appointing authorities to maintain records related to recruitment, civil service examinations, or the selection process, all of which are relevant to the effectiveness of the Board's auditing function.

In addition, the two-year retention period of Government Code section 12946 is insufficient. In certain instances, like special investigations into alleged illegal appointments, it may be necessary for the Board to review personnel-related documents and transactions dating back beyond two years.

Accordingly, the availability of documents under this regulation will assist in the quality of the Board's compliance reviews. Increased retention of merit and personnel-related records may also provide critical evidence of compliance with or deficiencies in the hiring and selection practices of appointing powers.

3. Purpose of the Proposed Regulation

The specific purpose for adopting a record retention requirement to the Board's regulatory scheme is to ensure: (1) clarity as to the personnel-related documents an appointing power is required to retain; (2) compliance reviews are thorough and complete; and (3) retention of specified personnel documents for the appropriate length of time.

¹ It should be noted that documents kept and maintained in an employee's official personnel file (OPF) or in the supervisor's file, also referred to as the drop file, may be required to be kept for a much longer period than five years. The OPF is a comprehensive record of the employee's transactional history as a state employee. It is maintained by the appointing power's human resources (HR) office and follows the employee if the employee transfers to another state appointing power. Depending on the employee's bargaining unit, the applicable MOU may include rules related to the supervisor's file.

CONSIDERATION OF ALTERNATIVES

The Board has initially determined that no reasonable alternatives it has considered or that have been otherwise identified and brought to the attention of the Board would be more effective in carrying out the purposes for which the instant action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.